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In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 946

CHARLES F. CLISE AND JAMES W. CLISE, JR., AS EXECUTORS OF THE ESTATE OF ANNA H. CLISE, DECEASED, PETITIONERS

v.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the United States Board of Tax Appeals (R. 29–37) is reported in 41 B. T. A. 820. The opinion of the United States Circuit Court of Appeals (R. 62–78) is reported in 122 F. (2d) 998.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered October 4, 1941 (R. 79). A petition

for rehearing was denied November 13, 1941 (R. 80). The petition for writ of certiorari was filed February 12, 1942. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

May there be included in the gross estate of the decedent, as a transfer under Section 302 (c) of the Revenue Act of 1926, as amended March 3, 1931, the value at decedent's death of annuity contracts purchased by the decedent payable to herself for life and thereafter to another for life?

STATUTE INVOLVED

Revenue Act of 1926, c. 27, 44 Stat. 9 (I. R. C. Sec. 811 (c)):

> SEC. 302. [As amended by H. J. Res. 529 of March 3, 1931, c. 454, 46 Stat. 1516, and as further amended by Sec. 803 (a) of the Revenue Act of 1932, c. 209, 47 Stat. 169, and Sec. 404 of the Revenue Act of 1934, c. 277, 48 Stat. 680.] The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated, except real property situated outside the United States—
>
> * * * * *
>
> (c) To the extent of any interest therein of which the decedent has at any time made

a transfer, by trust or otherwise, in contemplation of or intended to take effect in possession or enjoyment at or after his death, or of which he has at any time made a transfer, by trust or otherwise, under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death (1) the possession or enjoyment of, or the right to the income from, the property, or (2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom; except in case of a bona fide sale for an adequate and full consideration in money or money's worth. Any transfer of a material part of his property in the nature of a final disposition or distribution thereof, made by the decedent within two years prior to his death without such consideration, shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this title.

* * * * *

STATEMENT

Anna H. Clise, the decedent, a resident of Seattle, Washington, was born March 9, 1866, and died February 11, 1936. She was survived by her husband, two sons, a daughter, a brother, and eleven grandchildren (R. 30).

On December 10, 1934, the New York Life Insurance Company for a single premium of $7,500,

issued to decedent a joint and survivor nonparticipating annuity contract, No. 55,829. The company agreed to pay to the decedent, during her lifetime and upon her death to her son, James W. Clise, Jr., if living, an annuity of $375.36, payable in equal monthly payments of $31.28 each, on the 23d day of each month. The contract provided that the decedent should not have the right to commute, anticipate, transfer, or assign any right or interest in or under the contract or any payments provided for therein. James W. Clise, Jr., who was born September 1, 1900, was 35 years of age at the time of the decedent's death. The value of the contract at the date of the decedent's death was $6,170.24 (R. 32).

During the month of December 1934, fifteen other joint and survivor nonparticipating annuity contracts,[1] identical with contract No. 55,829 except in particulars not material here (R. 32–33, 54), were issued to the decedent by the New York Life Insurance Company and two other companies. Decedent invested approximately $80,000 in these sixteen contracts, payable to herself for life and then to designated survivors (her three children and one brother being each designated in four contracts) (R. 54).

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[1] The case originally involved other annuity contracts and insurance policies issued to decedent, but the contentions as to such matters were disposed of adversely to decedent's estate by *Helvering* v. *LeGierse*, 312 U. S. 531 (R. 67–59), and have been abandoned.

The Board held that these annuities were not transfers intended to take effect at or after death, and that their value should not be included in the gross estate (R. 37). The Circuit Court of Appeals reversed (R. 62–78).

ARGUMENT

The issue here is identical with that in *Commissioner* v. *Wilder's Estate,* 118 F. (2d) 281 (C. C. A. 5). In the *Wilder* case a petition for certiorari was filed June 6, 1941, while the instant case was pending before the Circuit Court of Appeals for the Ninth Circuit. The Government's response to the petition for certiorari urged that the petition be denied unless the Ninth Circuit should reach a contrary result in this case. But the decision in the instant case, rendered on October 4, 1941, reached the same result as in the *Wilder* case, and on October 13 this Court denied certiorari. There are no additional considerations here that would warrant the granting of the present petition.

The court below was plainly correct in holding that decedent had made a transfer intended to take effect in possession or enjoyment at or after her death within the meaning of Section 302 (c), *supra,* p. 2. Decedent had retained the full equivalent of income from the property transferred (cf. *Helvering* v. *Bullard,* 303 U. S. 297), and the rights of the beneficiaries were contingent upon and enlarged by decedent's death. Clearly the transfer was one under which decedent "has retained for [her] life

* * * the possession or enjoyment of, or the right to the income from, the property" (Section 302 (c)). The practical effect of the annuity contracts was to reserve to the decedent the enjoyment of the property transferred and to postpone the fruition of the economic benefits to the second annuitants until her death, a disposition "too much akin to testamentary dispositions not to be subjected to the same excise". *Helvering* v. *Hallock*, 309, U. S. 106, 112.

There is no conflict in decisions. The decision below is correct. The question presented does not warrant further review by this Court.

Respectfully submitted.

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